Court no.3

Criminal Revision no.40 of 2000

Beju Yadav---------- Revisionist

State of Uttaranchal…---------- Respondent.

Hon'ble Irshad Hussain.J.

The revisionist was tried on the charge u/s 25 Arms Act, 1959, on the report of P.S. Jwalapur, district Haridwar, on the allegations that he was found in possession of a country made pistol and two live cartridges without license at 4.00 A.M. on 21.7.1993 near Bhagat Singh Chawk within the circle of the said police station.

On investigation chargesheet was submitted against the revisionist and he was tried for the commission of the said offence in the court of Additional Chief Judicial Magistrate, Haridwar. In the trial the prosecution relied upon the evidence of head constable Dharambir Singh (P.W.1) and S.I. Naresh Chandra Jauhari (P.W.2), the witnesses of fact and Investigating Officer S.I. Krishna Avtar Singh (P.W.3). P.W.1 and P.W.2 gave out that while they were on patrol Duty, the revisionist was arrested on suspicion and on search was found to posses without license one country made pistol and two live cartridges and memo of recovery (Ex. Ka1) was prepared at the place of occurrence. They identified the recovered articles and denied the suggestion of false implication of the accused in this offence. The Investigating Officer has proved the steps taken towards the investigation of the case besides the sanction accorded by the District Magistrate on 7.8.1993 to prosecute the revisionist for an offence punishable u/s 25 Arms Act. The learned Magistrate finding the evidence of the prosecution reliable convicted and sentenced the revisionist u/s 25 of the Arms Act to undergo R.I. for one year. On appeal preferred by the revisionist, the learned III Additional Sessions Judge, Haridwar, also found the evidence of the prosecution credible and rejected the contention of the revisionist that in the absence of the evidence of the public witnesses the evidence of police witnesses is

unreliable and accordingly affirmed the judgment and order of conviction and sentence, thereby rejecting the appeal per judgment and order dated 4.12.2000. Aggrieved by the said judgment and order, this revision has been preferred.

Heard Sri N.C.Gupta, learned counsel for the revisionist and the learned A.G.A.

The learned counsel for the revisionist submitted that the trial Magistrate and the learned Sessions Judge failed to take into account that at the time of occurrence no public witness was summoned and considering this, the interested testimony of two police witnesses, namely, Head Constable Dharambir Singh (P.W.1) and S.I. Naresh Chandra Jauhari (P.W.2) should not have been relied upon in support of the prosecution version. In support of the contention, the learned counsel for the revisionist placed reliance on the decision of Allahabad High Court in the matter of Peerbux Vs. State, 1980(17) A.C.C. 187. The reported decision in the facts and circumstances of the case has no bearing and cannot be accepted that the evidence of two police witnesses warranted rejection in the absence of any public witness of the occurrence. The occurrence had taken place in the dark hours of early morning at 4.00 A.M. and at that time, it was usual that no public witness could be made available at the time of arrest and recovery from the revisionist. In the case of Nathu Singh Vs. State of M.P., A.I.R.1973 Supreme Court 2783, the Apex Court has held that the mere fact that the prosecution witnesses are police officials is not enough to discard their testimony in the absence of evidence of their hostility to the accused. The learned counsel for the revisionist could not point out any instance that the police personnel were having animus against the revisionist and had him falsely implicated in the case. The learned Magistrate as well as the learned Sessions Judge after appreciating the evidence of the accused accepted the evidence of the prosecution and finding recorded by them does not suffer from misreading of evidence as well as contrary to the settled legal norms. In short, I do not find any reason to disagree with the conclusion arrived at by the learned Magistrate as well the learned Sessions Judge.

It was then submitted that the revisionist was aged about 20 years only having no bad antecedents and therefore, a lenient view should have been

taken in awarding the sentence. It was accordingly submitted that there are cogent reasons to reduce the quantum of punishment and the revisionist may be sentenced only for the period already undergone.. Considering the age of the revisionists, his antecedents and also the fact that the occurrence took place in the year 1993, it will not be proper now to send the revisionist to Jail to remain in the company of hardened criminals and, therefore, the sentence of imprisonment awarded against the revisionist needs to be reduced to the period already undergone. The revisionist remained in custody from 21.7.1993 to 5.8.1993 and again after dismissal of the appeal from 13.12.2000 to 21.12.2000 and he is to be sentenced for the period already undergone by him.

The revision is accordingly partly allowed. The conviction of the revisionist u/s 25, Arms Act is upheld. The sentence of imprisonment is, however, reduced to the period already undergone. The revisionist need not to surrender to his bail bonds, which are cancelled, and the sureties are discharged. The articles seized shall be disposed of according to the directions of the court below.

(Irshad Hussain, J.)

August 6, 2002
M.P.S.